Secrtt. II-37—100,000—21-4-48.

FINANCE (1948) Department.

Ms SERIES.

G.O. No.	826
Dated	25th August 1948

[Despatch Abstract.]

Refunds - Incometax - Dividends on shares held by Provincial Government - Admissibility of.

GOVERNMENT OF MADRAS.
Finance Department.

Letter No. 53311/Accounts-B-2.

From

Dr. D.W. Dodwell, M.A., Ph. D. (Econ.), I.C.S.,
Secretary to the Government.

To

The Commissioner of Incometax,
Madras.

Fort St. George, the 5th December 1945.

Sir,

Sub:- Refund of incometax on dividends due to Governments as shareholders in Joint Stock Companies.

I am directed to state that the Madras Government are likely to participate in companies formed for the industrial development of the Province by subscribing towards their share capital of the company. A proposal is now under the consideration for the formation of a Joint Road Rail Company on a tripartite basis -- that is to say, the shareholders of the Company will be (1) the transport operators, (2) the Railway Department of the Central Government; and (3) the Provincial Government. Joint Stock Companies pay dividends out of their profits after paying income-tax on them. As the Provincial Government are exempted from income-tax by section 155(1) of the Government of India Act, 1935, it is presumed that they will be entitled to a refund of income-tax on dividends received by them on the shares of Joint Stock Companies registered in the Province. I am to request you to confirm this presumption and to say what procedure should be followed when this Government have to claim a refund of income-tax on such dividends. An early reply will be appreciated.

Your obedient servant,

(sd) x x x

Secretary to Government.

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C.No. L466/45.

Office of the Commissioner of Income-tax, Madras, Dated the 30th November 1946.

From
W.R. Wall, Esq., O.B.E.,
Commissioner of Incometax,
Madras.

To
The Secretary to the Government of Madras,
Finance (Accounts-B) Department.
Fort St. George. Madras.

Sir,

Sub:- Dividends - Dividends on shares in Joint Stock Companies held by Provincial Governments

Whether refund of tax admissible -

Ref:- Your letter No. 53311/Accounts-B-2. dated 5.12.1945.

In continuation of my letter No. C.No.1466/45 dated the 10th December 1945, I have the honour to inform you that the Central Board of Revenue has now given a ruling to the effect that a Provincial Government is entitled to refund of incometax on dividends received by it from share held in Joint Stock Companies. In cases where the proviso to section 155(1) of the Government of India Act, 1935, is not attracted, the Provincial Government would be entitled to a refund of the entire tax on the dividends, calculated in the manner laid down in section 18(5) read with section 16(2) of the Indian Incometax Act, 1922.

(Sd). x x x

For Commissioner.

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GOVERNMENT OF MADRAS.
Finance (Accounts-B) Department.

Memorandum No. 53311-Accounts-B-45-18 dated 30.1.1947.

Sub:- Income-tax - Refund on shares that may be held by Provincial Government in Joint Stock Companies.

In connection with their development programme the Government of Madras have taken shares in a number of Joint Stock Companies Provincial Governments are not liable to pay Income-tax under the Indian Income-Tax Act, 1922. The Government are therefore entitled to a refund of the incometax paid by Joint Stock Companies in respect of the dividends paid on shares held by the Government. The necessary refund applications should be sent to the Income-tax Officer, Salaries Circle, Madras, under section 48 of the Income-tax Act, 1922, read with Rules 36 to 39 and 41 of the Indian Income-tax A Rules, 1922. The Government will be treated as 'an association of persons" or 'an individual' for purposes of section 48 of the Income-tax Act, 1922. Under Rule 41 of the Income-tax Rules an application for refund may be presented through a duly authorised agent, and the heads of departments concerned will be deemed to be the authorised agents for this purpose. The refunds of income-tax received will be credited under the same heads as the respective dividends.

2. Departments of the Secretariat are requested to issue necessary instructions to the Heads of Departments concerned to take prompt action to claim the appropriate refund of income-tax and when anydividend is received ~~is received~~ from any Company in which the Government hold shares. In order to ensure that the matter is not overlooked in regard to any item, each department of the Secretariat is also requested to maintain a register in the form shown in the Annexure in respect of holdings with which it is concerned, and obtain the necessary reports from the head of departments e concerned in order to ensure that the register is kept up-to-da

and that all refunds due are claimed and received.

3. If any claim for refund of income-tax made by a head of department in accordance with these instructions is rejected in whole or part by the Income Tax Department, the head of the department should send a full report in the matter to the Government.

D.W. Dodwell,
Secretary to Government.

To

The Departments of Secretariat.

Copy to the Accountant-General, Madras.

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ANNEXURE.

Register showing Government holdings of shares in Joint Stock Companies.

Name of Joint Stock Company.	Number of shares held by Government and amount paid-up on each share.	Amount of dividend received with date.	Refund of income-tax.	
			Date of application for refund by Head of Department.	Amount of refund claimed.
(1)	(2)	(3)	(4)	(5)

Amount of refund obtained.	Remarks.
(6)	(7).

...

/True copy/

Superintendent,
Madras Record Office.

Notes

Extract of notes from relating to the formation of a Joint Road Rail Company with Transport Operators, Railways and Provincial Government.

* * *

(Issued as D.O. to Sir. John Sheehy, No. 53311/Acct/B/14-45, dated 18.11.1946).
Letter from the Commissioner of Income-Tax, C.1466/46 dated 30.11.1946.
D.O. from Sir John Sheehy, C.No. 41(1)/I.T.46 - dated 3.12.1946.

This file is kept pending a decision on the question of refund of Income tax on shares that may be held by the Provincial Government in Joint Stock Companies. The Commissioner of Incometax, who was addressed in December 1945 has furnished his reply on page 40 c.f. in consultation with the Central Board of Revenue. The latter has now given a ruling to the effect that a Provincial Government is entitled to refund/incometax on dividends received by it from shares held /of in Joint Stock Companies. The Commissioner has remarked that in cases where the proviso to section 155(1) of the Government of India, Act, 1945 is not attracted, the Provincial Government would be entitled to a refund of the entire tax on the dividends calculated in the manner laid down in section 18(5) read with section 16(2) of the Indian Incometax Act, 1922.

The above enquiry was instituted for a clarification of the position in connection with the proposals for the formation of a Joint Road Rail Company, a file still pending in the Home Department. There are also files about the formation of Industrial Financial Corporations in Public (Planning and Development) and Development. The Commissioner's ruling may be sent to the Departments concerned for perusal.

2. Another point for consideration is about the procedure to be followed when this Government have to claim a refund of Incometax on such dividends. This question was specifically raised in the reference to the Commissioner of Incometax on p. 1 c.f. The Commissioner's reply does not however give the detailed procedure in this regard. The general rule in regard to claim for refunds by a shareholder is that in section 48 of the Indian Incometax,Act, 1922. This does not specifically deal with the procedure to be followed by the/Government (as a share holder). The Commissioner of /Provincial Incometax may be addressed again on the question. A draft letter is submitted for approval. It may be sent to Legal Department for perusal before issue.

The questions raised in this file are:-

(1) whether the Provincial Government will be exempted from Income-tax on dividends received by them on the shares of Joint Stock Companies registered in this Province; and

(2) if so, what procedure should be followed when this Government have to claim a refund of income-tax

on such dividends.

Govt. of India state that this is subject to 'A' below.

2. Item (1) above:- The Government of India have given a ruling to the effect that a Provincial Government is entitled to refund of income-tax on dividends received by it from shares held in Joint Stock Companies.

D.W.D. A

3. Item (2) above:- In cases where the proviso to section 155(1) of the Government of India Act, 1935, is not attracted, the Commissioner of Income-tax states that the Provincial Government would be entitled to a refund of the entire tax on the dividends calculated in the manner laid down in section 18(5) read with section 16(2) of the Indian Income tax Act, 1922. With reference to 'A' above, please see the letter of the Bombay Government on pages 33-35 c.f. of G.O. No. 155, Finance, dated the 18th February 1946. It will be seen that the Provincial Government appear to be at present not assessable to incometax in respect of all income received from trade or business activities whether within or outside its Province - vide section 3 and definitions in section 2(2) and 2(9) of the Income-Tax Act.

B

Under proviso to section 16(2) of the Incometax Act read with section 18(5) of the Act, when any portion of the profit of the company is not liable to income-tax in the hands of the Company, any sum by which dividend has been increased under sub-section (2) of section 16 shall be treated as payment of incometax. It would appear to follow that the dividends paid on shares taken by the Provincial Government would include also the income tax otherwise payable. So that no separate claim for refund has to be made.

The remarks of Legal may be invited as to whether the position as stated at 'B' above is correct.

K.R.N.
9.12.46.

x x x
10.12.46.

I do not think 'B' above is correct. The company cannot very well pay dividends on the Governments shares in any different manner from those on other shares. In general the Company has to pay income tax at the prescribed rate on the whole of its income before paying out any dividend. All dividends will, I think, be paid out of taxed income and the Govt. will have to claim refund of the tax on their dividends and the Commr. of Income Tax will have to be asked to indicate the procedure to be followed. Legal may kindly advise on this point and also as to whether they agree with the position stated at (C) on p. 15 n.f., which is based on legal advice obtained by the Bombay Government.

It appears that the Govt. of India intended to insist on the application of the proviso to Section 155(1) of the Govt. of India Act and I fear this willprove extremely troublesome. It would mean that in the case of each Company in which the Government hold shares, the proportions of the profits arising from business inside and outside the Province respectively would have to be determined (or estimated) and only a proportionate refund of tax given to the Government according to the proportion of the profits arising from business carried on only within the Province.

D.W.D.
13.12.46.

LEGAL DEPARTMENT

The view expressed by the Finance Secretary at 'X' is correct. Under section 155(1) of the Government of India Act, the Provincial Government is not liable to Federal taxation in respect of income accruing, arising or received in British India. The effect of this provision is that the Provincial Government is not liable to income-tax on dividends received by them in respect of shares held in a company. This may not by itself enable the Government to claim refund of incometax paid by the company. But there is however section 49-B of the Incometax Act, which provides that income tax on company's dividend shall be deemed to have been paid by the shareholder. Hence the Government can claim refund of incometax paid on the dividend received by them. The procedure prescribed by section 48 of the Incometax Act for refund may not strictly apply to this case, but the Commissioner of Income tax may be addressed on the matter.

Under the provisions of the Incometax Act as they now stand, the position stated at 'C' on page 15 n.f. is correct. How far the Crown is bound by a Statue unless expressly mentioned has been recently considered by the Privy Council in the Province of Bombay Vs. Municipal Corporation of the City of Bombay. A full report of the judgment is not yet available, but a short summary of the judgment is reported in English Weekly Notes dated 2.11.46. From this report, it would seem that the Privy Council held that the Crown is not boundunless expressly named in the Statute or by necessary implication. If this is the view taken by the Privy Council, the decision in I.L.R. 25, Madras 457 could no longer be considered to be good law. This affords an additional reason for saying that the Provincial Government is not at present liable to income-tax in respect of income received from trade or business carried on whether within or outside the Province as all property of the Province is vested in the Crown. But by reason of the proviso to section 155(1), it will be open to the Central Government to amend the Incometax Act and make the Provincial Government liable to incometax in respect of income from trade or business carried on by or on behalf of the Provincial Government in another Province.

The qualification in the letter at page 42 c.f. from the Central Board of Revenue that refund could be claimed on dividends received on the shares of companies registered in the Province is somewhat difficult to follow.

Unless it would be said that the business carried on by the company is a trade or business carried on by the Provincial Government outside their Province, such dividends are not liable to tax under section 155(1),. If necessary, the Board may be addressed to clarify the position.

K.R.N.
20.12.46.

FINANCE (ACCOUNTS-B) DEPARTMENT

Please see notes from page 15 and the views of the Legal Department on pages 16-18 above.

'A' on p. 17 above - Procedure in claiming refund:-

A further communication received from the Commissioner of Incometax on the subject has since been sent to the Legal Department and the return of this file may be awaited.

'B' above - Scope of exemption:- Legal consider that the qualification in the letter at page 42 c.f. ante that refund could be claimed on dividends received on the shares of companies registered in the Province is somewhat difficult to follow. It is for consideration whether the Central Board of Revenue may be addressed d.o. to clarify the position on return of the file referred to at 'A' above.

Await receipt of the further communication sent to Legal till 6.1.1947.

K.R.N.
26.12.1946.

FINANCE (ACCOUNTS-B) DEPARTMENT

Sub:- Refund of Incometax on dividends paid to the Madras Government as a shareholder in Joint Stock Companies.

Ref:- Letter from the Commissioner of Incometax, Madras, No. C. 1466/45 dated 17.12.1946.

Please see the reference from the Commissione of Incometax, Madras, on page 3 c.f. detailing the procedure to be followed for obtaining a refund of Incometax on dividends. The main file on the subject was sent to Legal Department with Finance U.O. No. 53311-Accts-B-15, dated 13.12.1946. This may also be sent to that Department in continuation.

K.R.N.
21.12.1946.

LEGAL DEPARTMENT

The file referred to on page 1 ante was sentto Finance Department on 23.12.1946 with Legal U.D. 10368-1 dated 23.12.1946. This may be sent to Finance Department in continuation.

(Sd). x x x
4.1.47.

FINANCE (ACCOUNTS-B) DEPARTMENT

Please see notes from page 14 and the Legal Department's views on pages 16-18 above.

2. Procedure for claiming refund:- Legal observe that procedure prescribed by section 48 of the Incometax Act for refund may not strictly apply to this case but that the Commissioner of Incometax may be addressed in the matter. In a further communication since received from the Commissioner of Incometax, he has stated that the Provincial Government may apply to the Incometax Officer, Salaries Circle, Madras, for the refund of Income-tax due on the dividends received by it from shares held in Joint Stock Companies under section 48 of the Incometax Act, 1922 read with Rules 36 to 39 and 41 of the Indian Incometax Rules, 1922 and that for the purpose of granting refund under section 48, the Provincial Government will be treated as 'an association of persons' or 'an individual'. The Incometax Commissioner apparently considers that the Government should be treated as a company or individual and that no special procedure is contemplated. In that case no further reference to Incometax Commissioner seems necessary.

Necessary instructions may be issued to the Deptt. of Secretariat concerned.

K.R.N.
9.1.47.

Under rule 41 on page 261 of the Rules, an application for refund may be presented through a duly authorised agent. It will be necessary for the Head of the Department concerned to take necessary action to get a refund of Incometax as and when dividends are received from the companies in which the Government have taken shares.

3. Claim for Refund:- Legal Department agree with the views of Secretary at 'X' on p. 16 ante and state that the effect of the proviso under section 155(1) of the Government of India Act, is that the Provincial Government is not liable to Incometax on dividends received by them in respect of shares held in a company and taking into account Section 49-B of the Incometax Act they can claim refund of Income-tax paid on the dividend received by them. They however, point out that the qualification in the letter on page 42 c.f. that refund could be claimed on dividend received on the shares of companies registered in the Province is somewhat difficult to follow and suggest that if necessary the Board may be addressed to clarify the position. Subject to orders, a draft D.O. to the Board is submitted.

Legal may see before issue.

"'A' above:- It seems unnecessary for the Provincial Government to move in the matter. We may follow the Bombay Government and await action by the Government of India to amend the Incometax Act".

K.R.N.
9-1-47

"Probably 'Companies registered in the Province" is loosely used in the D.O. Refund of incometax on dividends on shares held in such companies without to further question how much of the business of the company was outside the Province would be more favourable than if only a proportionate refund on the basis of business in the Province is made. We need not, therefore, make a further reference on the point and thus give an opportunity for the proviso to section 155(1) being reiterated. After all the fact that Government held certain shares in a company does not make the business of the company - one carried on by or on behalf of Govt. and when the company is registered in the Province the income to the Government may be deemed to accrue in the Province. and if any question of refund being reduced on account of the profit earned by the company from any business outside the Province should arise in any concrete case we may put forward the plea that the proviso does not apply at all. It is not likely that the Provincial Government will directly carry on a business outside the Province".

x x x
10.1.47.

"I think the best course is to take it for the present that the Govt. are entitled to refund of British Indian incometax on dividends received by the Government from any Joint Stock Company that has paid B.I. incometax. If the Income Tax Department object to refund in any case on the ground that the company is not registered in the Province or that the business is not wholly carried on in the Province, we may then fight the matter out as well as we can. Will Legal and Development please say whether they agree?

D.W.D.
10.1.47.

LEGAL DEPARTMENT

In the circumstances stated, this Department may agree with the view of the Finance Secretary at page 22 ante.

x x x

17.1.47.

x x x

17

DEVELOPMENT DEPARTMENT

This Department may agree with the course suggested by the Finance Secretary at 'Z' on page 22 above.

A.S.M.
23.1.47.

K.R.
24.1.

FINANCE DEPARTMENT (Accts B)

Please see Secretary's remarks at the bottom of page 22 above. Legal and Development agree with his view.

Action has now to be taken only with reference to 'M' on page 21 above. A draft Office Memorandum is submitted for approval.

K.R.N.
29.1.47.

x x x
30.1.47.

"I think we must ask each Department of the Secretariat to maintain a register showing Govt. holding of shares in Joint Stock Companies with which it is concerned the amount of each dividend received from each company the amount of income tax refund obtained in respect of it, in order to ensure that the matter is not overlooked in regard to any item. Please amplify the draft".

D.W.D.
30.1.47.

The draft Memorandum as amplified is submitted for approval.

x x x
30.1.47.

"Issue".

D.W.D.
30.1.47.

(Issued as Memorandum No. 53311-Accts-B-45-18, dated 30.1.1947).

Copy of letter No. C.26/12/IT/48 dated 10th July 1948 from the Deputy Secretary to the Government of India, Ministry of Finance (Revenue Division), New Delhi to all Provincial Governments.

Sub:- Refunds - Income-tax - Dividends on shares held by Provincial Governments - Admissibility of.

I am directed to say that Central Board of Revenue had for sometime past taken the view that as a Provincial Government was a person within the meaning of section 3 of the Indian Incometax Act, 1922, it was entitled to refund of incometax in respect of dividend received by it on shares held in Joint Stock Companies. The Government of India are now advised that this view requires to be changed on the basis of the Bombay High Court decision in Commissioner of Incometax, Bombay City versus A.H. Wadia, as Agent to the Gwalior Durbar (1947 I.T.R. 367), that only a person who is an assessee under section 3 of the Indian Incometax Act, 1922, and liable to pay tax, may claim refund under section 48 or other refund sections of the Act. As Provincial Governments are themselves not liable to tax, no refund of tax deemed under section 49-B of the Indian Incometax Act to have been paid on dividends on the shares held by them in companies, whether operating within or without the Province, would be admissible to them. Such refunds will not therefore be granted in future.

2. In this connection, I am to point out that the policy underlying the system of granting refund of incometax (but not of Corporation tax) to private shareholders of companies is not indicated by any consideration of "the rule against double taxation" but rather on the ground that it is desirable to encourage joint stock enterprise by the public. This consideration is not applicable to the undertakings in which Provincial Government have a dominant interest, and which naturally enjoy certain monoplistic advantages. Moreover in strict legal theory, the taking of a company's profits without providing for refund of incometax to a shareholder does not in fact involve the taxation of the shareholders.

(vide House of Lords' decision in Canadian Eagle Oil Company Limited versus Rex (1946 A.C. 119). Accordingly the revised decision set out above does not involve any violation of either section 155(1) of the Government of India Act, 1935 or section 266 of the Draft Constitution of India.

(Sd). Pyare Lal,
Deputy Secretary to the Govt. of India.

Copy forwarded to all Commissioners of Incometax for information and necessary action.
Copy also forwarded to Ministry of Finance (Finance Division).

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GOVERNMENT OF MADRAS.
Abstract.

Refunds - Incometax - Dividends on shares held by Provincial Governments - Admissibility of.

FINANCE DEPARTMENT

G.O. Ms. No. 826. Dated the 25th August 1948.

Read:-
Memorandum No. 53311-AB-48-18, Finance (Accts-B) dated 30.1.1947.
From the Government of India, Ministry of Finance (Revenue Division), letter No.C.26(12)-IT/48 dated 10.7.1948.

Order:-

In view of the Government of India's decision communicated in their letter cited, the instructions issued by this Department in Memorandum No. 53311-AB-45-18, Finance (Accounts-B) dated 30.1.1947 are hereby cancelled.

(By Order of His Excellency the Governor)

(Sd) x x x x
24.8.1948.

To

The Departments of Secretariat.
The Accountant-General, Madras.

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FINANCE (ACCOUNTS-B) DEPARTMENT

Refunds - Incometax - Dividends on shares held by Provincial Governments - Admissibility of.

From the Government of India, Ministry of Finance, (Revenue Division), C.No. 26(12)/IT/48 dated 10th July 1948.

It will be observed from pages 1 and 44 c.f. of Memorandum No. 53311-Accts-B-45 dated 30.1.1947 that it was in reply to this department's representation that the Central Board of Revenue agreed to the refund of Incometax paid by Joint Stock companies in respect of the dividends on shares held by this Government. The heads of Departments were accordingly instructed to claim the appropriate refund due to the Government as and when any dividend was received from any company. The Government of India have now stated that the above view requires to be changed on the basis of a decision recently given by the Bombay High Court and that the refunds will not therefore be granted in future. The legal objection can be got over if the companies do not pay any income tax even in the first instance on the dividends payable to this Government. But this cannot be done unless the Central Government exempt the Provincial Government from payment of income-tax under section 60 of the Indian Incometax.Act. Itwill however be seen from the view taken in para 2 on pages 1-2c.f. that the Central Government are not likely to grant such an exemption.

Before instructions are issued to the Heads of Departments with reference to the Government of India's present decision, the case may perhaps be sent to Legal for their remarks, if any.

(Sd). x x x
27.7.48.

x x x
29.7.48.

LEGAL DEPARTMENT

Seen in Legal. No remarks seem called for in this Department.

x x x
16.8.48.

x x x
16.8.48.

FINANCE (ACCOUNTS-B) DEPARTMENT

A draft Order communicating the Government of India's decision to the Departments of the Secretariat in supersession of the instructions issued in Memorandum No. 53311-AB-45-18, dated 30.1.1947 is submitted for approval.

x x x
23.8.48.

"Issue".

x x x
24.8.48.

(Issued as G.O. Ms. No. 826, Finance, dated 25th August 1948).

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/True copy/

Superintendent,
Madras Record Office.

27/8.